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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20 CR 0093 (LTS)  
Telephone Conference

5 MICHAEL ACKERMAN,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 June 8, 2021  
12:01 p.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,

12 Chief District Judge

13 APPEARANCES VIA TELECONFERENCE

14 AUDREY STRAUSS,

15 United States Attorney for the  
Southern District of New York

16 BY: JESSICA GREENWOOD  
Assistant United States Attorney

17  
18 DAVID PATTON

FEDERAL DEFENDERS OF NEW YORK

19 Attorney for Defendant

20 BY: JONATHAN A. MARVINNY

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(The Court and all parties appearing telephonically)

THE COURT: Good afternoon. This is Judge Swain speaking.

THE DEPUTY CLERK: Good afternoon, Judge.

(Case called)

THE COURT: Again, good afternoon. We are here for a telephonic pretrial conference in this case.

Is the court reporter on the line?

THE REPORTER: Yes, your Honor. I'm here. Good afternoon.

THE COURT: Good afternoon. Thanks very much.

And now I'll ask counsel to state their appearances, beginning with counsel for the government.

MS. GREENWOOD: Yes, good afternoon, your Honor. Assistant United States Attorney Jessica Greenwood on behalf of the government.

THE COURT: Good afternoon, Ms. Greenwood.

And counsel for the defendant?

MR. MARVINNY: Good afternoon, your Honor. This is Jonathan Marvinny with the Federal Defenders of New York appearing for Michael Ackerman.

THE COURT: Good afternoon, Mr. Marvinny.

And, Mr. Ackerman, are you on the line as well?

THE DEFENDANT: Yes, I am, your Honor.

THE COURT: Good afternoon, Mr. Ackerman. And would

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1 you please just state your full name for the record?

2 THE DEFENDANT: Sure. Michael W. Ackerman.

3 THE COURT: Thank you so much.

4 I also greet any family members, friends, members of  
5 the press and public and others who may be listening in.

6 I remind participants that this is a public  
7 proceeding, and all who are listening in must keep their phones  
8 muted.

9 I'd also ask that counsel mute their phones when  
10 they're not speaking.

11 In addition, I remind everyone that, as provided in  
12 the Court's January 19th, 2021, standing order filed in docket  
13 number 21MC45, neither recording nor retransmission of any part  
14 of this proceeding is permitted.

15 I'll be calling on each speaker during the conference.  
16 Each time that you speak, please identify yourself by name for  
17 clarity of the record.

18 Please don't interrupt each other or me during the  
19 conference. If we interrupt each other, it is difficult to  
20 create an accurate transcript. But having said that, I  
21 apologize in advance for breaking the rule because I may  
22 interrupt if I have questions.

23 I'll give the attorneys an opportunity to make  
24 additional comments or ask questions at the end of the  
25 conference, but if anyone has any difficulty hearing me or

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1 another participant, please say something right away.

2 We are in the midst of the Covid-19 pandemic. I'm  
3 conducting this telephonic proceeding pursuant to the authority  
4 provided by section 15002 of the CARES Act and the standing  
5 orders issued pursuant to that act, and Mr. Ackerman is  
6 participating in this telephone conference, as he has  
7 confirmed.

8 Before I ask for a status update, I must share some  
9 important information with you all. Federal Rule of Civil  
10 Procedure 5(f) requires the Court to remind the parties orally  
11 and in writing of the prosecution's obligations under the  
12 Supreme Court's 1963 *Brady v. Maryland* decision, and the cases  
13 that it built upon that decision, of the possible consequences  
14 of violating those obligations.

15 I hereby direct the government to comply with its  
16 obligations under *Brady v. Maryland* and its progeny to disclose  
17 to the defense all information, whether admissible or not, that  
18 is favorable to the defendant, material either to guilt or to  
19 punishment, and known to the government.

20 Possible consequences for noncompliance may include  
21 dismissal of individual charges or the entire case, exclusion  
22 of evidence, and professional discipline or court sanctions on  
23 the attorneys responsible.

24 I have entered a written order more fully describing  
25 this obligation and the possible consequences of failing to

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1 meet it, which can be found at docket entry No. 34, and I  
2 direct the government to review and comply with that order.

3 Ms. Greenwood, do you understand these obligations and  
4 confirm that you have fulfilled or will fulfill them?

5 MS. GREENWOOD: Yes, your Honor.

6 THE COURT: Thank you. Ms. Greenwood, would you  
7 please provide us with a general status report?

8 MS. GREENWOOD: Yes. Happy to, your Honor.

9 So we were last before you almost a year ago, on  
10 August 11th, 2020. I've conferred with defense counsel, and we  
11 thought it made sense to appear before the Court to give you  
12 just a brief update of where we are and where we anticipate we  
13 will be going.

14 We have substantially completed discovery. We do have  
15 a production that is pending that will consist of one of the  
16 computers seized from Mr. Ackerman's house during his arrest,  
17 which we attempted to produce previously but was corrupted.  
18 Our copy was corrupted, and we had to re-pull it from  
19 production.

20 The production will also include some other smaller  
21 categories of data that we identified in our final file review,  
22 including some GPS data from Ackerman's phone and subpoena  
23 returns. We anticipate that production will go out later this  
24 week or next week.

25 THE COURT: Can you slow down just a little bit?

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1 MS. GREENWOOD: Sure. I have been accused of speaking  
2 too quickly many times; so I should know that.

3 In terms of our plan moving ahead, we've been in plea  
4 negotiations with defense counsel that have been very  
5 productive. We are close to formalizing a plea offer, and we  
6 anticipate that, in the next 30 days, we will be in a place  
7 where we will either be before the Court requesting -- you  
8 know, entering a change of plea, pursuant to a plea agreement,  
9 or requesting that we set a motion schedule and a trial date in  
10 lieu of a pretrial disposition.

11 THE COURT: So at this point, would you be looking for  
12 a next conference date in the 30-day time frame, with the  
13 potential that that date would be a date for addressing a  
14 disposition?

15 MS. GREENWOOD: Yes, your Honor. Exactly.

16 THE COURT: Thank you.

17 Mr. Marvinny, would you like to be heard?

18 MR. MARVINNY: Yes, your Honor. Jonathan Marvinny  
19 here. The status report and the timeline proposed by  
20 Ms. Greenwood makes sense from our perspective. We agree that  
21 there have been significant discussions towards a possible  
22 disposition --

23 THE COURT: Just one moment. We may have lost  
24 somebody. So let me just take attendance.

25 Ms. Prater, are you still on the line, the court

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1 reporter?

2 THE REPORTER: Yes, your Honor. I'm still here.

3 THE COURT: Thank you.

4 Ms. Greenwood, are you still on?

5 MS. GREENWOOD: Yes, your Honor.

6 THE COURT: Mr. Ackerman, are you still on?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And, Ms. Ng, are you still on?

9 THE DEPUTY CLERK: Yes, Judge. I'm here.

10 THE COURT: Thank you.

11 All right. Please continue, Mr. Marvinny.

12 MR. MARVINNY: Yes, your Honor. Jonathan Marvinny  
13 again. I was just saying that the timeline proposed by  
14 Ms. Greenwood does make sense to us. We expect that that  
15 there's a good likelihood that we'll have a disposition  
16 somewhere around the 30-day mark identified by the government.

17 So we would consent to setting this down for that  
18 purpose, and we would also consent to an exclusion of time  
19 under the Speedy Trial Act.

20 THE COURT: Thank you.

21 Ms. Ng, could we have a date in the 30-day time frame  
22 that we could set down for a potential change of plea hearing?

23 THE DEPUTY CLERK: Yes. You have Wednesday, July 7th,  
24 2021, at 2:00 p.m.

25 THE COURT: Mr. Marvinny, are you available on

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1 Wednesday, July 7th at 2:00?

2 MR. MARVINNY: I am, your Honor. May I just confirm?  
3 We are asking that this proceeding occur remotely both because  
4 of the Covid pandemic and concerns related to that, but also  
5 because Mr. Ackerman has very, very serious health issues that  
6 make travel close to impossible. So I hope we're setting a  
7 time for a remote court appearance, but yes, July 7th at 2:00  
8 p.m. works for me. Thank you.

9 THE DEPUTY CLERK: Judge?

10 THE COURT: Thank you for -- yes, Ms. Ng?

11 THE DEPUTY CLERK: Yes. We are setting it for a -- it  
12 can be set for a remote on July 7th at 2:00.

13 THE COURT: All right. Does Mr. Ackerman have the  
14 capability to do it with video by Microsoft Teams?

15 MR. MARVINNY: Jonathan Marvinny here. Go ahead,  
16 Mr. Ackerman.

17 THE DEFENDANT: Mr. Ackerman here. I don't have that  
18 application on my phone, but I'm sure I could put it on.

19 THE COURT: I think it's available as a download in  
20 the Apple and Google stores, and we can just provide a link  
21 that either directly to you or that Mr. Marvinny can send to  
22 you. Since it is a plea, my preference would be to do it by  
23 video.

24 THE DEFENDANT: I understand.

25 THE COURT: Thank you.



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1           And, Ms. Greenwood, does the government have any  
2           objection to proceeding remotely by video?

3           MS. GREENWOOD: No, your Honor.

4           THE COURT: Very well, then. We will put this down as  
5           a remote video proceeding.

6           Ms. Greenwood, is there a request for -- and,  
7           Ms. Greenwood, does the date and time, Wednesday, the 7th of  
8           July at 2:00 work for you?

9           MS. GREENWOOD: Yes, your Honor, that works for the  
10          government, and we would seek exclusion of time in the interest  
11          of justice through July 7th in order to facilitate the ongoing  
12          plea discussions.

13          THE COURT: And you said you have no objection,  
14          Mr. Marvinny?

15          MR. MARVINNY: That's correct, your Honor.

16          THE COURT: The request is granted. I find that the  
17          ends of justice served by the granting of an exclusion from  
18          speedy trial computations for the period from today's date  
19          through July 7th, 2021, outweigh the best interests of the  
20          public and the defendant in a speedy trial because of the need  
21          for time for further discussions and advice in connection with  
22          those discussions. Accordingly, the time period is excluded  
23          prospectively.

24          If we are going to address a plea, I will need a copy  
25          of the plea agreement or Pimentel letter at least three

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1 business days in advance. I think that the 7th is coming off a  
2 long weekend; so having it the end of the week before would be  
3 my preference and would be very helpful, sometime during the  
4 day on the Friday before.

5 And, Mr. Marvinny, you'll need to have reviewed the  
6 plea agreement and have had it fully executed, as well as a  
7 consent to remote proceeding form, and my advice of rights form  
8 completed and discussed with Mr. Ackerman prior to the time set  
9 for the remote conference. All right?

10 MR. MARVINNY: Yes, your Honor.

11 THE COURT: Thank you very much.

12 Is there anything further that we should take up  
13 together this afternoon?

14 MS. GREENWOOD: This is AUSA Greenwood. Nothing from  
15 the government.

16 MR. MARVINNY: Jonathan Marvinny here. Nothing from  
17 the defense. Thank you, your Honor.

18 THE COURT: Okay. Thank you. Keep well, all, and  
19 stay safe. We are adjourned.

20 MS. GREENWOOD: Thank you.

21 (Adjourned)  
22  
23  
24  
25